

Kate M. Baxter-Kauf
kmbaxter-kauf@locklaw.com
Direct: 612.596.4007



MINNEAPOLIS
Suite 2200
100 Washington Avenue South
Minneapolis, MN 55401-2179
T 612.339.6900
F 612.339.0981

February 19, 2019

VIA ECF

The Honorable Hildy Bowbeer,
United States Magistrate Judge
United States District Court
734 Federal Building
316 N. Robert Street
St. Paul, MN 55101
Bowbeer_chambers@mnd.uscourts.gov

Re: *In re EpiPen ERISA Litigation*, Case No. 0:17-cv-01884-PAM-HB

Dear Judge Bowbeer:

Plaintiffs submit this letter in accordance with the Court's Order Regarding Case Management Conferences (ECF No. 333) to address the items on the parties' Proposed Joint Agenda (ECF No. 349) for the Case Management Conference scheduled for Thursday, February 21, 2019.

Plaintiffs do not disagree with the agenda items and discussion of the parties' actions in the letter submitted by Defendants. As it stands, the Parties do not have any ripe disputes. However, as noted in the proposed joint agenda, item 1.b.1.3., Plaintiffs have a ripe dispute regarding the subpoenas served on non-parties Mylan N.V., Mylan Inc., Mylan Specialty L.P., and Mylan Pharmaceuticals Inc. (collectively, "Mylan") on March 7, 2018, with Mylan, and Plaintiffs do wish to provide the Court with additional information as to that ongoing dispute. Plaintiffs have conferred with counsel for Mylan and intend to submit a "short joint email" to chambers in accord with the Pretrial Scheduling Order (ECF No. 314) in which Plaintiffs will request that the Court address this issue informally at Thursday's Case Management Conference.

In short, while Plaintiffs and Mylan have agreed to resolve most of their disputes, the production schedule and Mylan's purported reasons for delay remain disputed issues. As of this past weekend, Mylan has now produced approximately 17,000 documents, but it has only committed to finishing its production of several thousand more documents by

February 19, 2019

Page 2

March 29, 2019—one business day before the April 1, 2019 substantial completion deadline for document production by the parties. Mylan’s position has been that despite spending several months following the September 11, 2018 motion to compel hearing negotiating search terms with Plaintiffs targeted to *this case*, to be applied to Mylan’s MDL production that *already was collected and reviewed*, Mylan needs to conduct another “relevancy” review to the documents responsive to the search terms in this case before it will produce them here. Despite Plaintiffs’ explanations to Mylan regarding why this is unnecessary and will prejudice Plaintiffs, Mylan has not agreed to move up its proposed production completion date.

Plaintiffs apprised Mylan in emails dated February 11, 2019 and February 14, 2019 of Plaintiffs’ intention to raise this discovery issue at and prior to this week’s case management conference and to prepare and submit a joint email to the Court before the conference. Plaintiffs and Mylan are meeting and conferring on the substance of that submission currently. Plaintiffs also forwarded to Mylan on February 14, 2019 the proposed joint agenda for the February 21, 2019 case management conference (ECF No. 349), which lists as an agenda item “Mylan’s production to date” and “Disputes that may require Court intervention: Production Schedule / Delay for relevancy review following application of negotiated search terms.” Plaintiffs further offered on February 14 to resolve the remaining disputes about the production timeline if Mylan would agree to complete its production by the end of this week—February 22, 2019—to which Mylan has not responded. Plaintiffs and Mylan are thus at an impasse regarding Mylan’s production schedule. Plaintiffs thus request the Court’s guidance as to how to quickly resolve this dispute given the case schedule and impending deadlines.

Respectfully submitted,

LOCKRIDGE GRINDAL NAUEN P.L.L.P.



Kate M. Baxter-Kauf
Plaintiffs’ Liaison Counsel